Supreme Court, U.S.
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E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

70-5376

No. 7229

VICTOR PEASE, Individually and on behalf of all others similarly situated,

Appellants,

v.

LAULETTE I. HANSEN, in her capacity as Director of Cascade County Welfare Department,

Appellee,

and

THEODORE CARKULIS, in his capacity as Administrator of the Montana State Department of Public Welfare,

Appellee.

JURISDICTIONAL STATEMENT

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STATEMENT AS TO JURISDICTION

The appellant, pursuant to United States Supreme Court rules 13 (2) and 15, files this his statement of the basis upon which it is contended the Supreme Court of the United States has jurisdiction on a direct appeal to review a decision of the Supreme Court of the State of Montana and should exercise such jurisdiction in this case.

OPINIONS BELOW

The decision of the Montana Supreme Court from which this appeal is taken is unofficially reported in 483 P.2d. 720 (1971). Attached hereto as Appendix A is a copy of the Montana Supreme Court's decision. Attached hereto as Appendix B is a copy of the judgment of the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, from which the initial appeal to the Montana Supreme Court was taken.

JURISDICTION

The instant suit was commenced in a Montana state court of original jurisdiction challenging the validity, under the Constitution of the United States, of a state statute imposing a one year durational residency requirement as a precondition to eligibility for welfare benefits. The lower Montana court held, in pertinent part, that the challenged durational residency requirement violated the Fourteenth Amendment to the Gonstitution of the United States. On appeal, the Supreme Court of the State of Montana reversed the lower Montana court, holding that the durational residency requirement was not repugnant to the Constitution of the United States.

The judgment sought to be reviewed herein was dated and entered March 22, 1971 and, under the Montana Rules of Appellate Civil Procedure, is not subject to a petition for rehearing.

Under Montana practice, the record was thereafter returned to the lower court, i.e., the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade. The Notice of the instant appeal was filed with that Court April 8, 1971.

The statutory provision believed to confer on this Court jurisdiction of the appeal is 28 U.S.C. Sec. 1257(2). Because of the finality of the decision of the Montana Supreme Court and the explicitness of the constitutional issue there presented and passed upon, it is believed unnecessary to cite cases believed to sustain the jurisdiction of this Court.

The Montana statute assailed as being repugnant to the Constitution of the United States is Section 71-302, Revised Codes of Montana, 1947, which provides:

> "Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana."

QUESTION PRESENTED

In Shapiro v. Thompson, 394 U.S. 618 (1969) this Court held that various State durational residency requirements as a condition to eligibility for welfare benefits were repugnant to the Fourteenth Amendment to the Constitution of the

United States. All of the welfare programs then considered were funded in part by the Federal government. The welfare program about which the instant suit revolves is funded entirely by counties within the State of Montana. Thus, the question presented is whether the Shapiro doctrine is applicable to Welfare programs not funded in any respect by the Federal government.

STATEMENT OF THE CASE

On March 16, 1970 the appellant, a resident of Montana for less than one year, brought suit in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, to enjoin the appropriate Montana Welfare authorities from denying him welfare benefits on the ground he was not a resident for at least one year. The suit also sought a declaratory judgment, declaring the Montana statute imposing the one year residency requirement unconstitutional, as being violative of the Fourteenth Amendment to the Constitution of the United States. For various reasons, the appellant did not qualify for benefits under any Federally assisted welfare program but, except for the durational residency requirement, would have qualified for benefits under a county-funded welfare program called "General Assistance", or "general relief".

The case was submitted to the Court on briefs and on the following agreed statement of facts:

1. That Plaintiff, Victor Pease, is now and since approximately April, 1969, has been residing in the County of Cascade, State of Montana.

2. That Plaintiff, prior to April, 1969, resided in the State of Washington.

3. That Plaintiff is currently unemployed and consequently is without sufficient income or resources

to provide himself with the necessities of life.

4. That Plaintiff, on or about January 21, made application to the Cascade County Department of Public Welfare for assistance. At that time he was granted two (2) weeks emergency assistance in the form of room and board at the Salvation Army Hotel. He received no money.

5. That Plaintiff, on or about February 6, 1970, made application for assistance to the Cascade County Department of Public Welfare. His application for general assistance (GA) was denied on the grounds that Plaintiff, Victor Pease, had not been a resident of the State of Montana for one (1) year and therefore in accordance with the provisions of R.C.M. 1947, Section 71-302, as amended, was not entitled to general assistance.

6. That Section 4561(2) of the Montana Department of Public Welfare Manual, Volume IV., Policies and Procedures, provides that before an individual is eligible for the benefits of general relief, he must have resided in the State of Montana for one (1) year.

7. That Plaintiff would be eligible for general assistance (GA) were it not for the fact that he has not resided in the State of Montana for one year prior to the submission of his application.

8. That the Cascade County Department of Public Welfare takes the position that it is compelled to observe all rules and regulations specified in the above-mentioned Manual and promulgated by the Montana Department of Public Welfare.

The lower Montana court found that insofar as the challenged statute conditioned eligibility for General Assistance upon residence in the state for one year it was repugnant to the Fourteenth Amendment to the Constitution of the United States. The court held, further, that the statute was susceptible of an interpretation which would preserve its constitutionality. It construed the statute as being merely an internal state fiscal plan under which the State Treasury, rather than local county treasuries, would be the source of general assistance benefits for welfare applicants not meeting the one year residence requirement (see Appendix B).

On appeal, the Supreme Court of Montana reversed the lower court, holding that the doctrine of Shapiro v. Thompson had no application to a welfare program not funded in any respect with federal money. Thus, the Supreme Court of Montana expressly held that application of the one year durational residency requirement to a purely county funded welfare program did not contravene the Constitution of the United States.

THE QUESTION PRESENTED IS SUBSTANTIAL

It is believed the decision from which this appeal is taken is the first reported declaration to the effect that the Shapiro doctrine is applicable only to welfare programs that are federally funded. At least two courts have expressly rejected that thesis. Barnett v. Lindsay, 319 F.Supp. 610 (D.Utah 1970), Major v. Van DeWalle, unreported Civil 4169 (N.D. Ind. 1969), a copy attached hereto as Appendix C. Other courts have applied the Shapiro doctrine to social services which apparently were purely state-funded without considering the possible distinction based upon the source

of the program funds. King v. New Rochelle Municipal Housing Authority, 314 F.Supp. 427 (S.D. N.Y. 1970), Vaughn v. Bower, 313 F.Supp. 37 (D. Ariz. 1970).

If the decision of the Montana Supreme Court is permitted to stand, the results are predictable. For many reasons, including those given in the dissenting opinion, the decision is patently wrong; to suggest that the Fourteenth Amendment applies only to State action supported by Federal money is absurd. Nevertheless, given the flexibility of judicial reasoning and the strong public policy favoring protection of state and local treasuries, the Montana decision would almost certainly be followed by some courts. If the fruit is not immediately nipped in the bud, this Court will necessarily be called upon in the future to chop down a larger tree; and it will be a tree nurtured upon deprivation of the Constitutional rights of many needy people.

CONCLUSION

WHEREFORE, it is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257(2), Title 28, U.S. Code.

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PEASE *v.* HANSEN, DIRECTOR, CASCADE COUNTY DEPARTMENT OF PUBLIC WELFARE, ET AL.

APPEAL FROM THE SUPREME COURT OF MONTANA

No. 70–5376. Decided November 16, 1971

— Mont. —, 483 P. 2d 720, reversed.

PER CURIAM.

The motion of the appellant for leave to proceed *in forma pauperis* is granted.

Whether a welfare program is or is not federally funded is irrelevant to the constitutional principles enunciated in *Shapiro* v. *Thompson,* 394 U. S. 618. The judgment of the Supreme Court of Montana is reversed.

THE CHIEF JUSTICE is of the opinion that probable jurisdiction should be noted and the case set for oral argument.